IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.68 OF 2006

Jaydeep Bhalchandra Shiralkar & Anr. ...Appellants

Vs.

Maruti Shankar Lakade ...Respondent

Mr.A.P.Kulkarni for the Appellants
Mr.Rupesh Bobde i/b Mr.U.R.Mankapure for the Respondent.

CORAM: A.S.OKA, J.
DATED: MAY 4,2006.

P.C.:

1. Admit. Respondent waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The original Opponents in the Claim Petition under section 166 of the Motor Vehicles Act, 1988 have taken exception to the Judgment and Award dated 6th December 2004 passed by the learned Member of the Motor Accident Claims Tribunal at Sangli. By the impugned Judgment and Award the Appellants were directed to pay compensation of Rs.10,000/- to the Respondent together with the interest thereon at the rate of 9% p.a. It is not in dispute between the parties that the entire amount payable under the impugned Award was deposited by the Appellants with the Tribunal and the said amount has been withdrawn by the Respondent.

3. The accident took place on 5th November 1995 at about

3.00 p.m. The Respondent claimant was riding his M-80 Moped. There was a stationary bus standing at a bus stop. The Respondent was attempting to cross the road from the front side of the bus.One Hiro Honda motor cycle which was being driven by the Appellant No.1 came from the rear side of the bus and gave a dash to M-80 Moped of the Respondent. The Appellant No.2 is the owner of the Hiro Honda motor cycle. The Respondent suffered injuries.

4. The Tribunal came to the conclusion that the Respondent himself was negligent to some extent and has contributed to the accident. The Tribunal held that both the Appellant No.1 and the Respondent were guilty of negligence while driving their respective vehicles. The tribunal held that the Respondent was entitled to total compensation of of Rs.20,000/-. Considering the finding regarding contributory negligence, the compensation was reduced to Rs.10,000/-.

5. I have heard the Advocates for the parties. I have perused the notes of evidence. The Respondent was crossing the road in front of the bus which had halted at the bus stop. The Appellant No.1 was overtaking the stationary bus. The Respondent had taken the risk of crossing the road from front side of the stationary bus. The Appellant No.1 ought to have been careful in overtaking the stationary bus.

6. In view of this situation, no fault can be found with the finding that there was contributory negligence on the part of the Respondent. The finding of the negligence against the Appellant No.1 is also supported by evidence on record.

7. Dr.Sadhana Vanjari who was then attached to General Hospital, Sangli has deposed that the Respondent had swelling on the left eye, bleeding through nose, abrasion over left forehead and abrasion over left chin. Dr.Tanaji Bajirao More has deposed that the Respondent suffered from perforation eyemtanic membrane of the ear and therefore he was required to be operated upon. The Respondent was treated as indoor patient for 13 days in a Hospital at Miraj. Considering this evidence, the Tribunal has awarded Rs.5,000/- on account of the medical treatment and medicines and a sum of Rs.5000/- on account of conveyance and special diet. A sum of Rs.6,000/- has been awarded on account of loss of income. A sum of Rs.3,000/- is ordered to be paid account of on pain and suffering. A sum of Rs.1,000/- is ordered to be paid on account of the expenses incurred on carrying out repairs to M-80 Moped. This is how the Tribunal has fixed total compensation of Rs.20,000/- and after deducting 50% on account of contributory negligence, a sum of Rs.10,000/- with interest at the rate of Rs.9% p.a. has been awarded.

8. I find no fault with the view taken by the Tribunal. The

compensation fixed is just and reasonable. There is no merit in the First Appeal and the same is dismissed with no order as to costs.

Judge.